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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1159

ARTHUR F. QUERN, ET AL.,

Petitioners,

vs.

VENUS MANDLEY ET AL.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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OPINIONS BELOW.

The opinion of the Court of Appeals for the Seventh Circuit in Case No. 76-1865 *(Mandley II)* can be found at 545 F. 2d 1062 (7th Cir. 1976).

QUESTIONS PRESENTED FOR REVIEW.

The respondents believe that the petitioners' Question 2 is not before the Court on this petition because it pertains exclusively to *Mandley I*, and the time for filing a petition for certiorari from that decision has long since past.

STATEMENT OF THE CASE.

The petitioners have not stated the facts of the case in a clear manner which will aid the Court in reviewing the case. The respondents refer the Court to the discussion of the facts in the opinion of the Court of Appeals in *Mandley II*.

Significantly, the petitioners do not dispute in any respect the facts as stated by the Court of Appeals in its decision. A review of that decision reveals that the petitioners, after the return of the mandate in the first appeal in this case, *Mandley* v. *Trainor*, 523 F. 2d 415 (7th Cir. 1975) *(Mandley I)*, misled the District Court and the parties by stating initially that they were not claiming or receiving federal funds, and later by refusing to state whether or not they were claiming or receiving any federal funds for an emergency assistance program. Nonetheless, the petitioners continued to administer the same program invalidated in *Mandley I;* they simply changed the name of the program to "special assistance." After eight months, the petitioners admitted in court that they had been claiming and receiving federal funds under 42 U. S. C. § 602, providing for reimbursement of payments made under the Aid to Families with Dependent Children (AFDC) program. The District Court, apparently believing that the change of the name of the program made the case moot, dismissed the case nearly a year after the return of the mandate in *Mandley I*.

The Court of Appeals in *Mandley II* held that the petitioners' actions amounted to a "blatant disregard of Congressional eligibility requirements," 545 F. 2d at 1064, and was, in effect, an evasion of the Court's mandate in *Mandley I*.

It should further be noted that Mr. Justice Stevens, on January 28, 1977, as the petitioners stated, stayed the mandate of the Court of Appeals until February 18, 1977. On February 18, 1977, the stay of mandate expired on its own terms, and a motion to extend the stay beyond that date was denied by Mr. Justice Stevens (Case No. A-619).

ARGUMENT.

The respondents believe that a detailed argument on the merits is unnecessary, and that the well-reasoned opinion of the Court of Appeals speaks for itself. A three judge panel of the Court ruled unanimously for the plaintiffs in a lengthy and sound opinion.

The ruling of the court below does not conflict with the decisions of other courts which have considered the issue. Three courts faced with similar issues have reached the same conclusion as the Court of Appeals, and *Mandley I* has been cited in other decisions. *Williams* v. *Wohlgemuth*, 540 F. 2d 163 (3rd Cir. 1976); *Lynch* v. *Philbrook*, ... F. Supp. ..... (D. Vt. 1976); *Ingerson* v. *Sharp*, 423 F. Supp. 139 (D. Mass. 1976). Each court, after examination of the Act and the legislative history of § 606(e), concluded that there is no indication from any source that Congress intended the coverage of § 606(e) to be optional with the states. The petitioners' argument, were it to prevail, however, would do just that. If a state could avoid § 606(e) eligibility requirements by merely renaming its emergency program and claiming reimbursement from the federal government as a part of its AFDC program, § 606(e) would, as the Court of Appeals explained, be totally eviscerated.

These rulings follow the same approach employed in countless decisions of this Court involving public assistance funding under the Social Security Act, from *King* v. *Smith*, 392 U. S. 309 (1968) and *Townsend* v. *Swank*, 404 U. S. 282 (1971), to *Philbrook* v. *Glodgett*, 421 U. S. 707 (1975).

In addition, many of the arguments the petitioners make are directed exclusively to an attack on *Mandley I*. Argument II is limited to this point. Yet, the petitioners had an opportunity after *Mandley I* to file a petition for certiorari in this Court and chose not to do so. In an application for a stay of the mandate of *Mandley I* in the Court of Appeals, the petitioners stated that they intended to file such a petition, but none was ever

filed. Instead of seeking review of *Mandley I*, the petitioners relabeled their program in an attempt to evade the mandate. The petitioners should now be precluded from arguing points directed to *Mandley I*.

The remaining part of the petitioners' argument appears to assert that the judgment order is "unadministerable" (Petition at page 9) and that it will cost too much money. Assuming *arguendo* that the judgment presents problems in administration for the petitioners, they should seek to modify the judgment elsewhere, marshalled by some evidence in support of their contentions, and not on petition for writ of certiorari. The petitioners have still not complied with the mandate of *Mandley II*, and there is pending in the District Court two motions for a rule to show cause why they should not be held in contempt of court. The petitioners have presented no evidence in these second remand proceedings substantiating their claim that the judgment is unadministerable. Their statement on page 14 that they have not claimed federal funds for their emergency assistance program since *Mandley II* is incorrect. They continue to operate the same program that was declared illegal in *Mandley I* and *II* and receive federal monies for the program.

The only specific claim in the petition that the judgment is unadministerable is that there is a requirement that emergency assistance be delivered to those found eligible within 24 hours. This assertion is not a correct statement of the provisions of the judgment. Paragraph C.1. provides (Petition at App. 34):

> Caseworkers and necessary supervisory and other staff shall give preference to requests for emergency assistance over all other work assignments. Within 24 hours of a request staff shall verify need, determine eligibility and follow all necessary procedures to secure issuance of the emergency assistance payment, whether by disbursing order or check. This time period may not be extended except—
>
> (a) for the time attributable to delay caused by an applicant's failure to provide essential information within his or her understanding and immediate control, or

> (b) by waiver signed by the applicant for emergency aid.
>
> Delay based upon an applicant's fault in (a) above shall be clearly described in the applicant's case record maintained by the department. In a case of waiver, the original waiver shall be maintained in the case record and the applicant shall be furnished a copy.

Thus, the 24 hour rule is not absolute and does not include the time for mailing.

This provision was based on the finding of the District Court after trial in 1974 that it took on the average from seven to ten days for emergency assistance to be delivered to those found eligible. The petitioners never objected to this provision when the proposed judgment was submitted in the District Court by the respondents. The petitioners filed objections to the proposed judgment order, but never raised any of the contentions they now assert.

CONCLUSION.

The respondents pray that this Court deny the petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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